

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:21-CR-46-MOC-WCM

UNITED STATES OF AMERICA,

v.

ANTHONY JAMES GROSS

Defendant.

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ORDER

This matter is before the Court on Defendant’s Motion to Seal Exhibit 2 and 2(a) to Sentencing Memorandum (the “Motion to Seal,” Doc. 35). Exhibit 2 (Doc. 36) is a five-page report (the “Report”) by George J. Demakis, Ph.D., a licensed psychologist. Exhibit 2(a) (Doc. 36 – 1) is a curriculum vitae (“CV”) for Dr. Demakis.

In evaluating a motion to seal, the Court must “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.” Ashcraft v. Conoco, Inc., 218 F.3d 288, 302 (4th Cir. 2000); see also LCrR 49.1.1.

The undersigned has reviewed the Motion to Seal and considered the public’s interest in access to the subject documents and alternatives to sealing.

The Motion to Seal has appeared on the docket since it was filed on July 12, 2022. Further, Defendant's sentencing hearing occurred on July 19, 2022, and the docket does not indicate that the proceeding was closed.

With regard to the subject documents, Defendant states that he seeks to file these materials under seal because they include "detailed sensitive and private personal medical and psychological information" about him and that the public's right of access to this information is substantially outweighed by Defendant's competing privacy interest in protecting the details of what is normally protected health information, particularly in light of his vulnerability in a custodial setting. Doc. 35 at 1. The record does not indicate that the Government has objected to the Motion to Seal.

In his Sentencing Memorandum, Defendant requested that the District Court sustain his objections to the calculation of his advisory guidelines and grant a downward departure or variance "due to his documented traumatic brain injuries and resulting neurocognitive disorder, all of which predated the offense conduct in this case, but are amenable to treatment and rehabilitation." Doc. 34 at 2. The Sentencing Memorandum identified Dr. Demakis and described his opinions.

Defendant's memorandum also gave notice that Defendant may call Thomas D. Owens, M.D., Chief Medical Examiner and Department Director, Mecklenburg County Office of the Medical Examiner, Charlotte, N.C. as a

witness. Id. at 3. A copy of Dr. Owens' curriculum vitae was attached to the Sentencing Memorandum and appears to be unredacted, except for the contact information for Dr. Owens.

Under these circumstances, the undersigned finds that Defendant has made a sufficient showing to warrant the sealing of the Report. While Defendant's cognitive functioning and background were pertinent to Defendant's sentencing arguments, information concerning those topics appeared in Defendant's Sentencing Memorandum, which is on the public record, and the public's right of access to the Report itself, which contains Defendant's sensitive and private medical information, is substantially outweighed by Defendant's competing privacy interest in that information.

With respect to the CV, however, this document does not appear to contain Defendant's personal information and it is not otherwise apparent why the CV should be sealed.

**IT IS THEREFORE ORDERED THAT** the Motion to Seal (Doc. 35) is granted in part and denied in part as follows:

1. With respect to Exhibit 2 (the Report, Doc. 36), the Motion is **GRANTED** and this document shall remain **SEALED** until further Order of the Court.

2. With respect to Exhibit 2(a) (the CV, Doc. 36 – 1), the Motion is **DENIED** and the Clerk is respectfully directed to **UNSEAL** this document.

Signed: August 11, 2022

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf  
United States Magistrate Judge

